

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

RSA No. 283 of 1996

Date of Decision : 27th December, 2007

Amar Chand

...Appellant.

Versus:

Madan Lal

...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ Yes.

For the appellant: Mr. Bhupinder Gupta, Sr. Advocate with
 Ms. Charu Gupta, Advocate.

For the respondents : Mr. Ajay Sharma, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgement and decree dated 7.6.1996 passed in Civil Appeal No.39-D/95, titled as Amar Chand vs. Madan Lal, dismissing the appellant's appeal assailing the judgment and decree dated 23rd September, 1995 passed by the Sub Judge Ist Class, Dharamshala, Distt. Kangra, in Civil Suit No. 198/91 titled as Madan Lal v. Amar Chand decreeing the plaintiff's suit.

For the purpose of convenience, the appellant herein is referred to as 'the defendant' and the respondent herein is referred to as 'the plaintiff'.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Plaintiff filed a Civil Suit No. 198/91, titled Madan Lal vs. Amar Chand before the Sub Judge, Ist Class, Dharamshala seeking declaration that the plaintiff is in possession of the land comprised in Khata No. 47 min, Khatoni No.94 min, Khasra No.321, measuring 0-21-98 hecs. (hereinafter referred to as 'suit land') as incorporated in Jamabandi for the year 1988-89 situated in Mohal Tang, Mauza Narwana, Tehsil Dharamshala, Distt. Kangra, H.P. and that the sale deed dated 11.10.1991 obtained by the defendant from the plaintiff with respect to the aforesaid land is a result of fraud, undue influence, misrepresentation and without any consideration. Consequential relief of permanent injunction restraining the defendant from interfering with the peaceful possession of the suit premises was also prayed for. It was alleged that the plaintiff had agreed to sell the suit land for a total consideration of Rs. 29,000/- and at the time of the execution of the sale deed, on the asking of the defendant a clause was incorporated that an amount of Rs.24,000/- stood already received by the plaintiff whereas actually the same was to be paid by the defendant at his residence after the execution of the sale deed. In good faith he believed the story and agreed to execute the sale deed. The said amount was never paid by the defendant thus rendering the sale deed to be void.

The defendant resisted the suit to be false. On merits, it was so stated that the plaintiff offered the land for sale and the land was agreed to be sold for a sum of Rs.29,000/-; out of which Rs.24,000/- was paid before the execution of the sale deed and the remaining amount of Rs.5000/- was to be paid

at the time of attestation of mutation in the revenue record. The defendant was put in possession and without the relief of possession the suit was not maintainable.

The trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession of suit land? OPP.
2. Whether the sale deed dated 11.10.1991 is the result of fraud, undue influence, misrepresentation and without any consideration, if so, its effect? OPP.
3. Whether the suit is not correctly valued for the purposes of Court fee and jurisdiction? OPD.
4. Whether the suit is not maintainable, as alleged? OPD.
5. Whether the plaintiff is estopped by his own act and conduct? OPD.
6. Whether the plaintiff is entitled for the relief as prayed for? OPP.
7. Relief.

In support of its case the plaintiff examined four witnesses; namely, S/Shri Madan Lal (PW-1), Surender Sharotri (PW-2), Angat Ram (PW-3) and Saran Dass (PW-4) and to prove its case, the defendant examined six witnesses, namely, S/Shri Amar Chand (DW-1), Farman Chand (DW-2), Prem Chand (DW-3), Dharam Chand (DW-4) and Gian Chand (DW-5) and Amar Nath (DW-6).

Based on the evidence on record, the trial Court came to the conclusion that through the evidence of PW-2 and PW-3, it was proved that the defendant in fact had promised the plaintiff to pay the sale consideration after execution of the sale deed, later at his residence, which was subsequently refused by the plaintiff. The suit of the plaintiff was decreed vide judgment and decree dated 23.9.1995 and the sale deed

executed on 11th October, 1991 was held to be void and not binding upon the plaintiff.

The defendant assailed the said judgement and decree in an appeal before the District Judge, Kangra, Dharamshala and relying upon a decision rendered by the High Court of Bombay in **Chadnashanker** vs. **Abhu Mathur** (AIR 1952, page 56), the appeal was dismissed in terms of the impugned judgment and decree dated 7.6.1996.

The appeal was admitted on the following substantial questions of law:-

1. Whether it is necessary that the entire sale consideration should pass before the execution and registration of the sale deed, whether the title passes on the date of registration and execution of the document, whether or not the sale consideration is paid in full or part?
2. Whether both the learned Courts below have erroneously misconstrued the provisions of section 54 of the Transfer of Property Act with respect to passing of title?
3. Whether the Rule of Estoppel ought to have been applied on maintainability of the suit filed by the plaintiff-respondent, when the plaintiff-respondent did not challenge the due execution and registration of the document?
4. Whether the suit of the plaintiff-respondent was not maintainable on account of proper pleadings and proof of the alleged particulars of fraud, misrepresentation and undue influence?
5. Whether the findings of the courts below are vitiated on account of misreading the oral and documentary evidence particularly the recital in the sale deed?
6. Whether both the learned Courts below have erroneously granted the decree of injunction when the possession of the defendant-appellant, Vendee was duly established on the record by virtue of the sale deed?

I have heard the learned counsel appearing for the parties.

On merits, the learned counsel for the defendant has reiterated the stand taken before the Court below. Arguing in the alternative, he has also referred to the provisions of Section 54 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Act') to contend that non payment of sale consideration would not render the sale void and it was open for the plaintiff to have filed a suit for recovery of sale consideration particularly when the challenge to the sale deed was not on the ground of fraud, coercion and misrepresentation. He has further referred to the provisions of Section 60 of the Registration Act as also Section 91 of the Indian Evidence Act to contend that in view of the documentary evidence incorporating the terms of the agreement the oral evidence to the contrary was required to be excluded.

Per contra, the learned counsel for the plaintiff has submitted that in order to construe true transactions between the parties, as reflected in the agreement, the intention of the parties was required to be gathered from the material on record. He has further contended that no substantial question of law arises for consideration in the present appeal and no interference is required for, more so against the concurrent findings of facts and, therefore, the same need to be dismissed. Learned counsel for the parties have also referred to various judicial pronouncements of different courts.

Ext.DW-1 (also exhibited as DW-6/A) is the sale deed dated 11.10.1991 in question. In the recital of the sale deed, it is clearly mentioned that the sale consideration is Rs.29,000/- and sum of Rs.24,000/- already stood paid at the

residence and Rs.5,000/- was payable at the time of attestation of mutation. It is a registered document, executed by the parties in the presence of the witnesses.

Plaintiff Shri Madan Lal (PW-1) has deposed that his house and cow shed had collapsed and since he was in need of money he had agreed to sell his land measuring 5½ kanals for sale consideration of Rs.29,000/- to the defendant. Defendant had asked him to get the sale deed registered and Rs.24,000/- was to be paid at the residence and remaining amount of Rs.5,000/- was to be paid at the time of attestation of mutation. On the day of registration the defendant informed him that the person who was to bring the money had not turned up and he would pay the money later at his residence but in the sale deed, it be got written that Rs.24,000/- stood paid to the plaintiff. The sale deed was registered after 2.00 P.M. Even though he executed the sale deed favouring the defendant but the sale consideration was not paid at the residence. He had asked the plaintiff twice or thrice to hand over the money but on one pretext or the other the same was refused. He had to mortgage his land to reconstruct the cow shed. The Patwari had informed him of the date of attestation of mutation but he had told the patwari that the sale consideration had not been paid to him and for the said reason he would not remain present at the time of attestation of mutation. The defendant had defrauded him. The defendant was Pardhan of his village therefore he had admitted having received the sale consideration of Rs.24,000/- whereas no money was paid to him and he continues to be in possession of the suit land. In his

cross examination he has admitted that even though he is illiterate the sale deed was scribed in the presence of the witnesses and he had signed the same after having admitting the contents thereof to be correct. He has admitted that he had visited the residence of the defendant offering the land to be sold and he had shown the land to the defendant. He has denied that the defendant is cultivating the land in dispute or that a sum of Rs.24,000/- was paid by him before the execution of sale deed at the residence. He had admitted that his uncle Charan Dass was annoyed with him for having sold the land to the defendant. He has denied the suggestion that for this reason he had refused to get the mutation attested and that his uncle is funding the litigation or that the suit was filed at his instance.

Shri Surender Sharotri (PW-2), a marginal witness to the sale deed Ext.D-1 has deposed that the parties had stated that they had arrived at an understanding that the transaction would be done later at home and in his presence no money was paid. He has stated what amount was paid and what was the remaining required to be paid was not discussed before him.

Shri Angat Ram (PW-3) has deposed that he scribed the sale deed (Ext.D-1). He has stated that since the defendant did not have money the parties had discussed that in the sale deed to be got written that the amount stood paid and the same shall be paid later at the residence. He had scribed the document on the instructions of the parties and the plaintiff had asked him to write the document and after writing the sale deed he had read over the contents thereof to the parties. He did not

remember which party had signed the document. He has admitted that the contents of the documents are correct and written by him. This witness has deposed that he has written thousands of documents, but could not remember as to whether he had scribed any sale deed containing terms similar to the sale deed in question. He was not present with the parties at the time of the registration of the document. He has admitted that before the document is registered, the Registrar reads the contents thereof to the parties and it is only when the parties admit the same to be true and correct the document is registered.

Shri Saran Dass (PW-4) is the neighbour of the plaintiff who has deposed that the suit land is being tilled by the plaintiff and he had not seen the defendant cultivating the same. In cross-examination this witness had admitted that he is on visiting terms with the plaintiff. In cross examination he had stated that the plaintiff is the owner of the suit land but however, in the next breath he has stated that the suit land stood sold, but he was not aware as to when and to whom the same was sold. He has denied the suggestion that there is animosity between him and the defendant and therefore he has deposed falsely.

Shri Amar Chand (DW-1) has deposed that he purchased the suit land from the plaintiff for a total sum of Rs.29,000/- out of which Rs.24,000/- stood paid to him at his house prior to the registration of the document. The sale deed was written on the instructions of the plaintiff and the same was presented before the Registrar for registration. The document

was readover by the scribe as also the Registrar and the same was signed by the parties in the presence of the witnesses after admitting the contents thereof to be correct. He has deposed that he is in possession of the land and is cultivating the same. He has not committed any fraud and he has clarified that in the end of July 1991 the money was paid to the plaintiff at his house in the presence of Shri Prem Chand. He has given details of the source of his income and has explained that he had borrowed Rs.6000/-each from Karam Chand and Farman Chand and had Rs.12,000/- with him. According to him, no amount was payable except for Rs.5,000/-. The execution of the sale deed was delayed as the plaintiff was avoiding the execution of the same after receiving the amount. The plaintiff was called for attesting the mutation. The plaintiff did not turn for the same but he was present and had carried the amount of Rs.5,000/- along with him. This witness has categorically deposed that the suit was instituted at the instance of the plaintiff's uncle Shri Charan Dass. Plaintiff also instituted partition proceedings of which he learnt a month before recording his statement and since he was not made a party he has also moved an application before the Tehsildar. Plaintiff is a resident of another Panchayat known as Chayant Tang Nirwana and not the Panchayat of which he was the Pradhan. The receipt for payment of Rs.24,000/- was not obtained as the plaintiff had agreed to get the sale deed executed. This witness has elaborately explained the denomination of the currency and narrated the time and place of the payment made by him to the plaintiff. He has explained that he is a man of means and has put up a small cottage

handloom industry and has buffaloes in his Dairy form. Possession of the suit land was handed over after harvesting the Dhan (Rabi) crop. He has denied the suggestion that the plaintiff continues to be in possession of the suit land or that the possession was not given to him. According to him, the plaintiff was in need of money as his property was damaged in the rains in the year 1991 and he had bought the property. He has denied that at the time of registration of sale deed he had no money and that he had stated that somebody would be coming with money and the document be prepared for registration. He has denied the suggestion that at the time of writing of the document he had stated that the man had not come with the money and the banks had also closed, therefore, it be written that the payment has been made and the money shall be paid at the residence later on as the plaintiff is known to him since long. The plaintiff is not totally illiterate as he has studied upto 5-7 standard. He has further denied that he evaded the issue of payment as and when the same was demanded by the plaintiff and that he had informed the plaintiff that the money could not be arranged and only after further sale the payment would be made.

This witness has been cross examined at length and there is nothing in his statement which would impeach his credibility or make his statement untrue or incorrect.

Shri Farman Chand (DW-2) has deposed that the defendant had borrowed Rs.6,000/- from him for the purchase of the land and the same was repaid to him. He is owning 24 Kanals of land; also has cottage industry; and an orchard of

265 fruit bearing trees. This witness has corroborated the statement of DW-I about the place and the denomination of the currency of the money he had lent. Since 1969 he and the defendant had financial dealings and would borrow money on need basis.

Shri Prem Chand (DW-3) has stated that plaintiff is the god brother of his wife and the sale consideration of Rs. 24,000/- was paid by the defendant in the plaintiff's house in his presence during monsoon season about three years ago. No receipt was executed in his presence. He has also corroborated the version of DW-1 about the place and the denomination of the money paid. According to him, at the relevant time the defendant was not the pardhan.

Shri Dharam Chand (DW-4) has deposed that the defendant had borrowed amount of Rs.6,000/- for purchasing the land and the same was returned. He had withdrawn the money out of his pension fund and furnished the details of his bank account.

Shri Gian Chand (DW-5) has stated that he knew the parties and has seen the disputed land, which is in possession of the defendant, who is cultivating the same. His land is adjoining to the suit land. In cross examination he has deposed that the defendant is in possession of the suit land since the last three years.

Shri Amar Nath (DW-6), Naib Tehsildar, has deposed that he remained Naib Tehsildar cum Sub Registrar at Dharamshala from 1987 to 1993 and the sale deed Ext. D-1 was registered during his tenure. He has admitted his signature at

endorsement Ext.DW-6/A. According to him, the contents of the sale deed were read over to the plaintiff who had signed the sale deed after having admitting the correctness of the contents. He rejected the mutation No. 246 dated 6.12.1991 for the reasons recorded therein.

In ***Vidhyadhar vs. Manikrao and another*** (1999 (3) SCC 573), the Apex Court has held that the actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and registered the sale would be complete and the transaction of sale would take effect and the title would pass under that transaction.

In ***Bishundeo Narain Rai (dead) by L.Rs and others v. Anmol Devi and others*** (AIR 1998 SCC 3006), the Apex Court has clearly held that in order to construe a sale the intention has to be gathered from the sale deed as also the binding circumstances.

The real test is the intention of the parties. In order to construe a sale, the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either before or after the sale. The conduct of the parties and the evidence on record need to be examined to ascertain the intention of the parties.

This Court in ***Shri Kripa Ram and others vs. Maina*** (2002 (2) Shimla Law Cases 213) has held:

“That presumption of the due execution of the document arises from the endorsement of the Sub Registrar under Section 60 of the Act.”

In ***Kanwarani Madna Vati and another vs. Raghunath Singh and other***, (AIR 1976, HP 41), it has been held that in view of the provisions of the Registration Act, Registration of a document leads a presumption of the correctness of the endorsement made on the document of registering officer.

It is not the case of the plaintiff that he had not presented himself for registration before the Sub Registrar or that the document was not executed by him and the registration was not done in his presence.

The present appeal, undoubtedly arises out of a concurrent finding of fact but as has been noticed in the foregoing paragraphs there is gross misappreciation of evidence touching the root of the matter. In my view there is perversity in the appreciation of evidence and material on record while arriving at its conclusion by the Courts below. The intention of the parties was to sell the land and transfer the same alongwith its title and create rights in favour of the defendant and holding to the contrary would result into miscarriage of justice.

Section 54 of the Act clearly stipulates that sale is a transfer of ownership in exchange of price paid or promised or part paid or part promised. The sale deed in the present case has been executed. It is the case of the defendant that a sum of Rs.24,000/- was paid and then only the sale deed was got executed. The defendant and the plaintiff are not relatives or

otherwise close to each other. It is not the case of the plaintiff that the defendant was in a position to exercise confidence or has control over him. They were not having dealings in the past. Therefore, there was no occasion for the plaintiff to have believed the defendant and executed the sale without receiving even a single penny. It is highly unbelievable that such a transaction took place between the parties. There is nothing on record to show that the plaintiff had asked the defendant to pay the amount in terms of the understanding which is alleged to have been entered into between the parties. The sale deed, as has been noticed earlier is a registered document. In view of the fact that there is a document on record the oral evidence needs to be looked into with caution and circumspection to rebut the presumption.

PW-1 has stated that he had to create a mortgage to reconstruct his cowshed but there is nothing on record to substantiate the same. DW-1, has specifically deposed that the suit was filed at the behest of Shri Charan Dass, plaintiff's uncle who was annoyed for having sold the land to the defendant. There is no cross-examination by the plaintiff on this point. Therefore, the learned counsel for the appellant is right in contending that after having received a sum of Rs.24,000/- as part sale consideration, the sale deed was executed by the parties and only thereafter the plaintiff, at the behest of a third party filed the present suit challenging the sale deed in question. On the comparative assessment and appreciation of the statements of the witnesses of the parties, I am of the considered view that the defendant has been able to prove that

the evidence led by the defendant is cogent, consistent, reliable and trustworthy.

Statement of PW-3 is also of not much assistance to the plaintiff. He has admitted that the document was scribed on the instructions of the plaintiff and the contents were read out to him. This version does not appear to state the truth. He has scribed thousands of documents and does not remember the agreed terms with respect to other documents but clearly remember the terms agreed upon between the parties in the instant case. He also does not remember as to which of the parties had signed the sale deed in question. His statement was recorded in the Court on 1st June, 1994 i.e. after a period of 3 ½ years. How could he remember the specific terms he had scribed in the sale deed? PW-3 did not personally know the plaintiff nor was he having relations with him so as to remember the same. Assuming the version of PW-3 to be correct that the parties had incorporated the clause of having received the money on the understanding that the same was later on to be paid to the plaintiff, in my view this clearly establishes the intention of the parties that the plaintiff had in fact intended to transfer the interest in the property in question to the defendant for a valuable consideration.

The intention of the parties is also evident from the statement of PW-4 who has stated that the plaintiff had sold the land. It is the case of plaintiff himself that he was in need of money and had in fact agreed to sell the land to the defendant for a consideration of Rs.24,000/- and that he had signed the sale deed which was registered in the presence of the Registrar.

It was he who had offered to sell the land to the defendant. He has also admitted that he was called by the Patwari to effect the mutation but had refused for the same.

The defendant through his witnesses has proved the execution of the sale deed and also intention of the plaintiff to transfer the land in his favour. He has also proved that part of the sale consideration i.e. Rs.24,000/- was paid by him in the presence of DW-3 who is the God brother of the wife of the plaintiff. It has been proved that the same was paid in the plaintiff's house. The defendant has also been able to establish that the money was paid after borrowing some of the same from DW-4 and DW-5 and that he was willing to pay the balance sale consideration of Rs.5,000/- at the time of the mutation. It was the plaintiff who backed out from fulfilling the terms of the sale deed.

From the statement of DW-6, it has been proved that the correctness of the contents of Ext.D-1 were admitted by the plaintiff in his presence at the time of the execution of the sale deed.

Through the consistent, cogent and reliable evidence of the defendant, it is clearly borne out that the true intention of the plaintiff was to transfer the interest in the land in favour of the defendant for a valuable consideration.

The defendant has proved his possession on the suit land though his statement as also the statement of DW-5 whose land is adjoining to the suit land.

In the facts and circumstances, therefore, it cannot be said that the plaintiff is the owner in possession of the suit

land and that the sale deed dated 11th October, 1991 is a result of fraud, undue influence, misrepresentation and without any consideration and the suit has to be consequently dismissed.

However, it has come on record that the balance sale consideration of Rs.5,000/- offered by the defendant was not accepted by the plaintiff. In the facts and circumstances, the plaintiff is entitled to the said amount. In my view, the interest of justice would be met if the defendant also pays interest on the said amount at the rate of 12% from 6.12.1991 (when the plaintiff was asked to offer for effecting mutation) till the date of payment. The payment shall be made at the time of effecting the mutation.

The fact that the plaintiff executed the sale deed and also got the same registered after fully understanding the contents thereof is not under dispute and under challenge. In the absence of the same, the plaintiff was left with no option but to recover the sale consideration.

In the absence of any pleadings and proof with regard to fraud, misrepresentation and undue influence, in my view, the Courts below committed a serious irregularity in deciding the same. In the face of the contents of Ext.D-1 with regard to the possession of the land, the oral evidence of the plaintiff to the contrary ought to have been rejected and not considered by the courts below to grant a decree of permanent injunction restraining the defendant from interfering with the possession of the suit property.

In view of the decision rendered by the Apex Court in ***Vidyadhar (supra)***, the ratio of law laid down in the various judgments of the High Court is not referred to and discussed.

The substantial questions of law are answered accordingly.

For the aforesaid reasons, the appeal is allowed. The judgments of the Courts below are set aside and the suit of the plaintiff is dismissed. Decree sheet be prepared accordingly.

**(Sanjay Karol),
Judge.**

**December 27, 2007.
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